

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

FILED

June 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

ESTATE OF SYLVESTER TERRY,)
)
Plaintiff/Appellant,)
)
v.)
)
GENERAL ACCIDENT INSURANCE)
COMPANY OF AMERICA,)
)
Defendant/Appellee.)

Fayette Circuit No. 3672

Appeal No. 02A01-9805-CV-00136

APPEAL FROM THE CIRCUIT COURT OF FAYETTE COUNTY
AT SOMERVILLE, TENNESSEE

THE HONORABLE JON KERRY BLACKWOOD, JUDGE

For the Plaintiff/Appellant: _____ For the Defendant/Appellee:

Richard G. Rosser
Somerville, Tennessee

Kenneth R. Shuttleworth
William D. Domico
Estelle C. Gaerig
Memphis, Tennessee

REVERSED AND REMANDED

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

DAVID R. FARMER, J

OPINION

This is a breach of contract case. The decedent was killed in an automobile accident that also totaled his vehicle. The decedent's credit life insurance policy paid the outstanding debt on the vehicle. Because the credit life policy had paid for the vehicle, the decedent's automobile insurer refused to pay for collision damage to the vehicle. The estate sued the automobile insurer for failure to pay the claim. The trial court granted summary judgment for the insurance company. We reverse and remand.

Sylvester Terry ("decedent") was the owner of a 1991 Oldsmobile 88 Royale. At the time he purchased the vehicle, the decedent created a lien in favor of Ford Motor Credit. The decedent also obtained a credit life insurance policy naming Ford Motor Credit, the lender, as beneficiary. In addition, the vehicle was covered by an automobile insurance policy issued by General Accident Insurance Company ("General Accident"), which included both liability and property coverage for the vehicle. The automobile policy contained a provision which stated in part: "If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits."

On December 23, 1992, the decedent died in an automobile accident while driving the Oldsmobile. On April 12, 1993, the credit life insurance policy paid the outstanding debt on the vehicle as well as \$4,246.76 to the decedent's estate as a rebate for unearned finance charges. General Accident paid the decedent's estate's liability claims, but refused to pay the estate's claims for the property damage to the decedent's automobile on the basis that the property claim had been satisfied by the payment on the credit life policy. The estate then filed this suit against General Accident to recover under the automobile insurance policy for the property damage to the vehicle.

On March 27, 1996, the decedent's estate filed a request for production of documents. On September 30, 1996, the decedent's estate filed a motion to compel discovery and impose sanctions for General Accident's failure to respond to their discovery request. On January 16, 1998, General Accident filed a motion for summary judgment, arguing that the payment by the credit life insurance fully compensated the estate for the property damage to the car, or, in the alternative, that General Accident's liability was limited to its pro rata share based on the credit life payment. The decedent's estate filed a memorandum of law in opposition to General Accident's summary judgment motion and in support of their motion for partial summary judgment; however, the record does not include the motion for partial summary judgment filed on behalf of decedent's estate. The trial court heard

the motion to compel discovery and General Accident's summary judgment motion. The trial court granted summary judgment in favor of General Accident without ruling on the motion to compel. From this order, the decedent's estate now appeals.

A motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56.03. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993). On a motion for summary judgment, the court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *Id.* at 210-11. Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). Since only questions of law are involved, there is no presumption of correctness regarding a trial court's grant of summary judgment. *Id.* Therefore, our review of the trial court's grant of summary judgment is *de novo* on the record before this Court. *Id.*

On appeal, the decedent's estate argues that summary judgment is inappropriate because the two insurance policies insure different interests and different risks; therefore, the loss insured by General Accident was not satisfied by virtue of the credit life payment, and General Accident may not prorate any loss based upon the credit life payment. General Accident argues that the life insurance payment constitutes payment from other sources; therefore, their liability is limited to their pro rata share of liability under the "other sources of recovery" clause in the automobile policy.

We noted in *Tennessee Farmers Mutual Insurance Company v. Canal Insurance Company*, 425 S.W.2d 762, 768 (Tenn. App. 1958), that "[t]he principle of proration in the law of insurance is designed to equalize the burden between compensated insurers of identical risks." *See also Western Agric. Ins. Co. v. Industrial Indem. Ins. Co.*, 838 P.2d 1353, 1357 (Ariz. Ct. App. 1992) (holding that two casualty insurers were not entitled to proration because the two policies covered distinct, separate insurable interests in same property); *American Fire & Cas. Co. v. Marathon Aviation Marathon, Inc.*, 196 So. 2d 782, 783 (Fla. Dist. Ct. App. 1967) (observing that exclusions for other insurance are applied when policies cover "the same subject matter, risk and interest"); *Lucas v. Garrett*, 41 S.E.2d 212, 214 (S.C. 1947) (holding that two insurers were not

entitled to proration where one policy covered a party's legal liability and the other policy covered property damage); *State Farm Fire & Cas. Co. v. Griffin*, 888 S.W.2d 150, 155 (Tex. Ct. App. 1994) (holding that homeowner's policy and flood policy covered different risks and insurers were not entitled to proration).

In the case at bar, the two policies at issue are an automobile insurance policy and a credit life insurance policy. General Accident admitted in its Answer that the decedent had a valid automobile insurance policy in effect on the date of the accident. The declaration portion of the automobile policy provides collision coverage for the automobile. Part D of the policy defines "collision" as "the upset of 'your covered auto' or a 'non-owned auto' or their impact with another vehicle or object." The credit life insurance policy was not made part of the record; however, the risk insured by the credit life policy is undisputed. Tennessee Code Annotated § 56-2-201 defines credit life insurance as "that form of insurance under which the life of a borrower of money or a purchaser of goods is insured in connection with a specified loan or credit transaction." Tenn. Code Ann. § 56-2-201 (3)(B) (Supp. 1998). The parties do not dispute that the credit life policy paid the outstanding balance of the debt on the Oldsmobile to Ford Motor Credit as well as unearned interest on the automobile loan to the decedent's estate.

The two policies do not insure identical subject matter or risks. The collision policy protects the insured against property damage to a vehicle as a result of a collision while the credit life insurance insures the *life* of a borrower. The credit life policy was intended to pay for the vehicle regardless of how the decedent died, so that the estate would not be liable for the indebtedness on the automobile. Had the decedent died of a heart attack, his estate would have no outstanding debt on a fully functional vehicle. Therefore, General Accident is not entitled to a credit for the payment of the proceeds from the credit life insurance policy. Consequently, we conclude that the trial court erred in granting summary judgment in favor of General Accident. The decision of the trial court is reversed.

While the facts are apparently undisputed and the record alludes to a motion for partial summary judgment by the decedent's estate, the record on appeal does not include the plaintiff's motion for summary judgment or any indication that the trial court considered it. Consequently, the cause is remanded for further proceedings. In light of this ruling, we find it unnecessary to address

the plaintiff's issue on appeal that the trial court erred in failing to rule on the plaintiff's motion to compel discovery.

The decision of the trial court is reversed, and the cause is remanded for further proceedings consistent with this Opinion. Costs are assessed against the Appellee, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P. J., WS.

DAVID R. FARMER, J.